

RUSS, AUGUST & KABAT  
Marc A. Fenster, State Bar No. 181067  
[mafenster@raklaw.com](mailto:mafenster@raklaw.com)  
Matthew A. Rips, State Bar No. 175636  
[mrrips@raklaw.com](mailto:mrrips@raklaw.com)  
Brian D. Ledahl, State Bar No. 186579  
[bledahl@raklaw.com](mailto:bledahl@raklaw.com)  
12424 Wilshire Boulevard  
Twelfth Floor  
Los Angeles, California 90025  
Telephone: 310/826-7474  
Facsimile: 310/826-6991

Attorneys for Vedanti Systems Limited

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MAX SOUND CORPORATION  
VEDANTI SYSTEMS LIMITED

Plaintiffs,

v.

GOOGLE, INC., YOUTUBE, LLC, and  
ON2 TECHNOLOGIES, INC.

Defendants.

Case No. 5:14-cv-04412-EJD

Honorable Judge Edward J. Davila

**RUSS, AUGUST & KABAT'S  
NOTICE OF MOTION AND  
MOTION FOR LEAVE TO  
WITHDRAW AS COUNSEL OF  
RECORD FOR VEDANTI  
SYSTEMS LIMITED;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;  
DECLARATION OF MATTHEW  
A. RIPS**

Date: September 3, 2015

Time: 9:00 a.m.

Place: Courtroom 4, 5<sup>th</sup> Floor

Judge: Hon. Edward J. Davila

3596-002 150729 RAK MT to Withdraw v2.docx

**RUSS, AUGUST & KABAT'S NOTICE OF MOTION AND MOTION FOR LEAVE TO  
WITHDRAW AS COUNSEL OF RECORD FOR VEDANTI SYSTEMS LIMITED;  
MEMORANDUM OF POINTS AND AUTHORITIES; DECL. OF MATTHEW A. RIPS  
(CASE NO. 5:14-CV-04412-EJD)**

RUSS, AUGUST & KABAT

**TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS' OF  
RECORD:**

**PLEASE TAKE NOTICE** that on September 3, 2015 at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 4 of the above-captioned Court, located at 280 South 1<sup>st</sup> Street, San Jose, California, the law firm of Russ August & Kabat and its members who are attorneys of record in this matter, Marc Fenster, Brian Ledahl and Matthew Rips (hereinafter "Law Firm") will and hereby do move to withdraw as counsel of record for Vedanti Systems Limited ("Client").

By this motion, Law Firm seeks an order from the Court permitting Law Firm to withdraw as counsel, pursuant to Local Rule 11-5, on the grounds that Client has repeatedly failed to cooperate and properly communicate with Law Firm, Client has failed in its obligations to keep with its agreements with Law Firm, there have been conflicts between Client and Law Firm regarding how to proceed with the litigation as well as regarding the scope of Law Firm's engagement, and Client has assented to the withdrawal, but has failed to substitute other counsel in a timely manner.

This motion is based on the attached Memorandum of Points and Authorities, the Declaration of Matthew A. Rips, Esq., all of the documents in the court's file herein, and such further evidence as may be presented at the time of hearing on the motion to withdraw. As set forth in the Declaration of Mr. Rips, Law Firm has provided notice of its motion to withdraw to Client, Plaintiff

///

///

///

///

///

MaxSound Corporation, and Defendants Google, Inc., Youtube, LLC, and On2 Technologies, Inc.

Respectfully submitted,

Dated: July 29, 2015

RUSS, AUGUST & KABAT

/s/ Matthew A. Rips

Matthew A. Rips, CA SBN 175636

Email: [mrrips@raklaw.com](mailto:mrrips@raklaw.com)

12424 Wilshire Boulevard

Twelfth Floor

Los Angeles, California 90025

Telephone: 310/826-7474

Facsimile: 310/826-6991

*Attorneys for Vedanti Systems Limited*

RUSS, AUGUST & KABAT

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Law Firm brings this motion to withdraw as counsel for Client because the attorney-client relationship between Law Firm and Client has been irreparably damaged, particularly due to the following:

- (1) **Client renders it unreasonably difficult for the Firm to carry out the representation effectively.** California Rules of Professional Conduct (“CRPC”), Rule 3-700(C)(1)(d). More specifically, Client has repeatedly failed to cooperate and properly communicate with Law Firm. Further, Client has failed in its obligations to keep with its agreements with Law Firm.
- (2) **Client insists that the Firm engage in conduct that is contrary to the judgment and advice of the Firm.** CRPC, Rule 3-700(C)(1)(e). More specifically, there have been conflicts between Client and Law Firm regarding how to proceed with the litigation as well as regarding the scope of Law Firm’s engagement.
- (3) **Client has knowingly and freely assented to the withdraw.** CRPC, Rule 3-700(C)(5). More specifically, following notice to Client of Law Firm’s intention to withdraw, Client indicated that it would engage new counsel to substitute in place of Law Firm. However, after more than one month, Client has not yet caused new counsel to be substituted in place of Law Firm.

Each of these bases provides independent grounds for withdrawal under the California Rules of Professional Conduct, which governs the attorney-client

relationship in California.<sup>1</sup> Accordingly, as discussed further below, Law Firm respectfully requests that its motion for leave to withdraw as counsel be granted.

## II.

### **STATEMENT OF ISSUE TO BE DECIDED**

Whether Law Firm is permitted to withdraw as counsel for Client where (a) Client has repeatedly failed to cooperate and properly communicate with Law Firm, (b) Client failed in its obligations to keep with its agreements with Law Firm, (c) there have been conflicts between Client and Law Firm regarding how to proceed with the litigation as well as regarding the scope of Law Firm's engagement, and (d) Client has assented to the withdrawal, but has failed to substitute other counsel in a timely fashion.

## III.

### **ARGUMENT**

Law Firm makes this motion pursuant to Local Rule 11-5, which permits counsel to withdraw from a case once relieved by order of Court "after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case." Civ. L.R. 11-5. Further, CRPC, Rule 3-700(A)(1) requires that a member "not withdraw from employment in a proceeding before [a] tribunal without its permission."

The merits of a motion by an attorney to withdraw are governed by the law of the state that controls the attorney-client relationship. *See White Consolidated Industries, Inc. v. Island Kitchens, Inc.*, 884 F.Supp. 176, 179 (E.D.Cal. 1997); *see also Mindscape, Inc. v. Media Depot, Inc.* 973 F.Supp. 1130, 1131 (N.D.Cal. 1997)

<sup>1</sup> Other grounds may exist for withdraw, but are not stated here. Law Firm reserves the right to assert such other grounds as may be necessary or desirable.

(applying California law to motion to disqualify counsel). California law therefore governs this motion.

Rule 3.700 of the California Rule of Professional Conduct identifies the grounds for mandatory and permissive withdrawal of counsel. Subdivision (C)(1)(d) of that rule provides that an attorney may withdraw if a client “by other conduct renders it unreasonably difficult for the member to carry the employment effectively.” Additionally, subdivision (C)(1)(e) permits withdrawal by counsel if the client “insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act.” Moreover, subdivision (C)(5) permits withdrawal by counsel if the client “knowingly and freely assents to termination of the employment.”

As set forth in the accompanying declaration of Matthew A. Rips, Law Firm has demonstrated that its grounds for withdrawal satisfy Rule 3.700. Since April 2015, Client has failed in its obligations to keep with its agreements with Law Firm. Client repeatedly has failed to cooperate and properly communicate with Law Firm, including Client’s failure to respond properly to numerous requests for information pertinent to the representation in this matter. Additionally, there have been conflicts between Client and Law Firm regarding how to proceed with the litigation, conflicts regarding the scope of Law Firm’s representation of Client, and conflicting instructions from Client. In good faith, Law Firm remained as counsel through attempts to counsel Client about these matters and to settle and resolve these issues despite difficulties imposed by Client. The attorney-client relationship between Law Firm and Client, however, has now been irreparably damaged, and Law Firm’s representation of Client is no longer feasible. In June 2015, Client assented to the withdraw, and indicated that it would engage substitute counsel, but

1 has not yet done so. For at least the foregoing reasons, it is necessary for Law  
2 Firm to withdraw as counsel.

3 As indicated in the preceding paragraph, Law Firm has complied with the  
4 prerequisites for withdraw set forth in CRPC, Rule 3-700(A)(2), by giving Client  
5 ample notice and more than adequate time to engage substitute counsel. Further,  
6 this action is at an early stage, so there is no prejudice to Client. With regard to  
7 CRPC, Rule 3-700(D), as of the time of the Court ordering that Law Firm may  
8 withdraw, Law Firm represents that it promptly will comply with that rule.

9 Additional facts giving rise to this Motion are confidential and required to be  
10 kept confidential pursuant to California Business and Professions Code §6068(e),  
11 Rule 3-100(A) of the CRPC, and by the attorney-client privilege prescribed under  
12 Evidence Code §§950 *et seq.*

13 In deference to the attorney-client communication privilege, Law Firm  
14 respectfully declines to provide further additional information in this public filing.  
15 But to the extent further corroboration as to Law Firm's grounds for withdrawal  
16 are necessary, Law Firm can and will provide such information for the Court's *in*  
17 *camera* review, so as to protect the attorney-client privilege and avoid potential  
18 prejudice to Client.

19 In compliance with Local Rule 11-5, Law Firm has provided written notice  
20 of the herein motion reasonably in advance to Client and to all parties who have  
21 appeared in the above captioned case. Law Firm has also provided advance notice  
22 to Client of a corporation's inability to appear *pro se*, resulting in its need promptly  
23 to coordinate the retention of new counsel for this matter. Client has responded  
24 that they will indeed seek new counsel for this matter, but has since failed to cause  
25 new counsel to be substituted in place of Law Firm.

IV.

CONCLUSION

For the foregoing reasons, Law Firm respectfully asks the Court for an order relieving it as counsel for Client in this litigation.

Respectfully submitted,

Dated: July 29, 2015

RUSS, AUGUST & KABAT

/s/ Matthew A. Rips

Matthew A. Rips, CA SBN 175636

Email: [mrrips@raklaw.com](mailto:mrrips@raklaw.com)

12424 Wilshire Boulevard

Twelfth Floor

Los Angeles, California 90025

Telephone: 310/826-7474

Facsimile: 310/826-6991

*Attorneys for Vedanti Systems Limited*



**DECLARATION OF MATTHEW A. RIPS**

I, Matthew A. Rips, hereby declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California. I am a member of the law firm of Russ, August & Kabat, as well as are Marc Fenster and Brian Ledahl ("Law Firm"). Law Firm constitutes the attorneys of record herein for Vedanti Systems Limited ("Client"). I make this declaration in support of Law Firm's motion to withdraw as counsel of record for Client. I have personal knowledge of the facts herein alleged and if called upon to testify thereto, I could and would competently do so.

2. Since April 2015, Client has failed in its obligations to keep with its agreements with Law Firm. Client repeatedly has failed to cooperate and properly communicate with Law Firm, including Client's failure to respond properly to numerous requests for information pertinent to the representation in this matter.

3. There have been conflicts between Client and Law Firm regarding how to proceed with the litigation, conflicts regarding the scope of Law Firm's representation of Client, and conflicting instructions from Client.

4. In good faith, Law Firm remained as counsel through attempts to counsel Client about these matters and to settle and resolve these issues despite difficulties imposed by Client. The attorney-client relationship between Law Firm and Client, however, has now been irreparably damaged, and Law Firm's representation of Client is no longer feasible.

5. In June 2015, Client assented to the withdraw, and indicated that it would engage substitute counsel, but has not yet done so.

6. For at least the foregoing reasons, it is necessary for Law Firm to withdraw as counsel.

7. Law Firm has complied with the prerequisites for withdraw set forth in CRPC, Rule 3-700(A)(2), by giving Client ample notice and more than adequate time to engage substitute counsel. Further, this action is at an early stage, so there is no prejudice to Client.

8. With regard to CRPC, Rule 3-700(D), as of the time of the Court ordering that Law Firm may withdraw, Law Firm represents that it promptly will comply with that rule.

9. Additional facts giving rise to this Motion are confidential and required to be kept confidential pursuant to California Business and Professions Code §6068(e), Rule 3-100(A) of the California Rules of Professional Conduct, and by the attorney-client privilege prescribed under Evidence Code §§950 *et seq.*

10. In deference to the attorney-client communication privilege, Law Firm respectfully declines to provide further additional information in this public filing. But to the extent further corroboration as to Law Firm's grounds for withdrawal are necessary, Law Firm can and will provide such information for the Court's *in camera* review, so as to protect the attorney-client privilege and avoid potential prejudice to Client.

11. In compliance with Local Rule 11-5, Law Firm has provided written notice of the herein motion reasonably in advance to Client and to all parties who have appeared in the case.

12. Law Firm has also provided advance notice to Client of a corporation's inability to appear *pro se*, resulting in its need promptly to coordinate the retention of new counsel for this matter. Client has responded that they will indeed seek new counsel for this matter, but has since failed to take further action.

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3  
4 DATED: July 29, 2015

/s/ Matthew A. Rips

Matthew A. Rips

RUSS, AUGUST & KABAT

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.5, I hereby certify that on July 29, 2015, I caused the foregoing documents:

- 1) **RUSS, AUGUST & KABAT'S NOTICE OF MOTION AND MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR VEDANTI SYSTEMS LIMITED; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MATTHEW A. RIPS;**
- 2) **[PROPOSED] ORDER RE RUSS, AUGUST & KABAT'S MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR VEDANTI SYSTEMS LIMITED; and**
- 3) **PROOF OF SERVICE RE RUSS, AUGUST & KABAT'S MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR VEDANTI SYSTEMS LIMITED**

to be electronically filed with the Clerk of the Court. I understand that the Court will provide electronic notification of and access to such filing to the counsel of record in this matter who are registered on the CM/ECF as listed below.

DATED: July 29, 2015

RUSS, AUGUST & KABAT

By: /s Matthew A. Rips  
 Matthew A. Rips  
 Attorneys for Defendant  
 VEDANTI SYSTEMS LIMITED

Matthew D. Davis

Email: [mdavis@walkuplawoffice.com](mailto:mdavis@walkuplawoffice.com)

Khaldoun Baghdadi

Email: [kbaghdadi@walkuplawoffice.com](mailto:kbaghdadi@walkuplawoffice.com)

Michael Albert Kelly

Email: [mkelly@walkuplawoffice.com](mailto:mkelly@walkuplawoffice.com)

WALKUP MELODIA KELLY & SCHOENBERGER  
650 California Street, 26th Floor  
San Francisco, CA 94108-2702

Adam J. Levitt  
GRANT & EISENHOFER P.A.  
Email: [alevitt@gelaw.com](mailto:alevitt@gelaw.com)  
Catherine O'Suilleabhain  
Email: [cosuilleabhain@gelaw.com](mailto:cosuilleabhain@gelaw.com)  
Geoffrey C Jarvis  
Email: [gjarvis@gelaw.com](mailto:gjarvis@gelaw.com)  
Jay W. Eisenhofer  
Email: [jeisenhofer@gelaw.com](mailto:jeisenhofer@gelaw.com)  
30 North LaSalle Street, Suite 1200  
Chicago, IL 60602

Deborah Elman  
Email: [delman@gelaw.com](mailto:delman@gelaw.com)  
GRANT AND EISENHOFER P.A.  
485 Lexington Ave, 29th Floor  
New York, NY 10017

Brian Andrew Carpenter  
Email: [brian.carpenter@BJCIPlaw.com](mailto:brian.carpenter@BJCIPlaw.com)  
Christopher Michael Joe  
Email: [Chris.Joe@bjciplaw.com](mailto:Chris.Joe@bjciplaw.com)  
Eric William Buether  
Email: [eric.buether@bjciplaw.com](mailto:eric.buether@bjciplaw.com)  
Mark Davin Perantie  
Email: [mark.perantie@bjciplaw.com](mailto:mark.perantie@bjciplaw.com)  
BUETHER JOE & CARPENTER, LLC  
1700 Pacific Avenue, Suite 4750  
Dallas, TX 75201

**Counsel for Plaintiff**  
**Max Sound Corporation**

Jennifer J. Schmidt  
Email: [jschmidt@wsgr.com](mailto:jschmidt@wsgr.com)  
Michael Jeffrey Guo

Email: [mguo@wsgr.com](mailto:mguo@wsgr.com)

Robin L. Brewer

Email: [rbrewer@wsgr.com](mailto:rbrewer@wsgr.com)

Stefani Elise Shanberg

Email: [sshanberg@wsgr.com](mailto:sshanberg@wsgr.com)

WILSON SONSINI GOODRICH & ROSATI, P.C.

One Market Plaza, Spear Tower, Suite 3300

San Francisco, CA 94105

**Counsel for Defendants**

**Google, Inc., YouTube, LLC and ON2 Technologies, Inc.**

RUSS, AUGUST & KABAT